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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,698	10/23/2003	John E. Bennett	DE012	9786

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EXAMINER

COOLMAN, VAUGHN

ART UNIT	PAPER NUMBER
3618	

DATE MAILED: 07/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/692,698	Applicant(s) BENNETT ET AL.	
	Examiner Vaughn T. Coolman	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-15 and 17-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15,17,18,33-38,40 and 42-44 is/are allowed.
- 6) ☒ Claim(s) 1-6,8-14,19,20,22-25,39 and 41 is/are rejected.
- 7) ☒ Claim(s) 21 and 26-32 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/07/2006 has been entered.

Claim Objections

Claims 27-32 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 27-32 have not been further treated on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5, 6, and 8-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "said fixed orientation" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "said upper and lower members" in lines 1-2 and 3-4.

There is insufficient antecedent basis for this limitation in the claim.

Claims 6 and 9-11 are rejected as depending from a rejected base claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Square (U.S. Patent No. 4,924,531).

[claim 1] Square discloses an adjustable height seat (shown in FIGS 1-5), comprising:

- a chair frame (12)
- a telescoping support (5, 8) mounted to said chair frame
- a seat (4) entirely supported on said telescoping support
- a spring (19) normally urging said telescoping support towards an elevated condition (shown in FIG 4)

Square also discloses said telescoping support being operative for raising and lowering said seat relative to said chair frame responsive to repositioning of a user's body weight on said seat (Column 1, lines 49-56).

[claim 2] Square further shows said seat being depressed from an elevated to a lowered position when the user's body assumes a relatively reclined position (as opposed to an upright

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position) wherein the user's body weight overcomes said urging of said spring (Column 3, lines 1-11).

[claim 3] Square further shows said seat being elevated from a lowered position when the user's body is partially offloaded from said seat onto a ground surface such that said spring overcomes the user's remaining body weight on said seat (Column 3, lines 1-11) and causes telescoping extension of said telescoping support for raising said seat relative to said frame (shown in FIG 4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Square.

[claim 4-1, 4-2 4-3] Square discloses all of the elements of the claimed invention as described above except for said telescoping support being frictionally arrested against substantial telescoping movement. Examiner notes that in a forward leaning seated position of the user on said seat, some of the telescoping parts (5, 5a, 5b) of Square would experience a tilting forward, resulting in an increased frictional force being applied at the lower front edges of the holes of one member (5) and the upper rear edges of the collars (5a, 5b) against other telescoping members (6, 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seat shown by Square in a manner such that the increased

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frictional force resulted in an arresting of telescoping movement of the telescoping support, since such a modification would provide the user with a means for stopping the seat at the most comfortable height.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Square in view of Bloswick et al (U.S. Patent No. 5,513,867).

[claims 5-4-1, 5-4-2, 5-4-3] Square discloses all of the elements of the claimed invention as described above except for the orientation of the telescoping support being inclined away from the vertical. Bloswick teaches (see FIG 1) a telescoping support (66) for a height adjustable seat (40) that is inclined away from the vertical. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seat shown by Square, with the inclined telescoping support as taught by Bloswick, since such a modification would provide the advantage of pushing the user out away from the frame where it would be easier for another person to help the user if additional assistance is required.

[claim 6-5-4-1, 6-5-4-2, 6-5-4-3] Square further shows his chair having a back (2), a front (11b, 12b), and two sides (11, 12). The chair of Bloswick (see FIG 1) also has a back, a front, and two sides, and he shows the orientation of the telescoping support being inclined towards the front.

Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Square in view of Haskins.

[claims 8-1, 8-2, 8-3] Square further shows the telescoping support having an upper tubular member (14a) with said spring contained inside. However, Square does not teach a lower tubular member for the telescoping support. Haskins teaches (see FIGS 1-3) a chair (30) having an adjustable seat (35) including a telescoping support (62A) having an upper (67) and lower (63) tubular member having a spring (262, 265 – pneumatic spring assembly) contained within. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seat shown by Square with the upper and lower tubular member configuration as taught by Haskins, since such a modification would provide the advantage of protecting the spring internals from any harmful elements in the atmosphere.

[claims 9-8-1, 9-8-2, 9-8-3] Square in view of Haskins discloses all of the elements of the claimed invention as described above except for the tubular members being rectangular in cross section. However, the examiner notes that it would have been obvious to one of ordinary skill in the art to modify the telescoping members to be rectangular in cross section, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

[claims 10-8-1, 10-8-2, 10-8-3] Square in view of Haskins discloses all of the elements of the claimed invention as described above including said upper member (67) being slidable within said lower member (63).

[claims 11-8-1, 11-8-2, 11-8-3] Square in view of Haskins discloses all of the elements of the claimed invention as described above including the spring being a gas spring (Haskins). It would have been obvious to one of ordinary skill in the art to modify the riser seat of the chair taught by Square to include a gas spring configuration as taught by Haskins, for biasing the seat,

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since it is well known in the art, that coil springs and gas springs would be art recognized equivalents and the selection of any of these known equivalents would be within the level of ordinary skill in the art.

Claims 1, 12-14, 19, 20, 22, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haskins in view of Square.

[claim 1] Haskins discloses an adjustable height seat (shown in FIGS 1-22), comprising:

- a chair frame (40)
- a telescoping support (62A) mounted to said chair frame
- a seat (35) entirely supported on said telescoping support
- a spring (pneumatic cylinder)

Haskins does not teach user body weight responsive operation of the adjustment mechanism.

Square teaches (see FIGS 1-5) a spring (19) normally urging a telescoping support towards an elevated condition (shown in FIG 4) for a height adjustable seat assembly. Square also teaches said telescoping support being operative for raising and lowering said seat relative to said chair frame responsive to repositioning of a user's body weight on said seat (Column 1, lines 49-56).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seat shown by Haskins with the body weight responsive operation of the seat as taught by Square, since such a modification would provide the advantage

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of the user having the ability to raise himself to a standing position to greet a business associate or friend, with the aid of the spring, while expending only a bit of energy.

[claim 12] Haskins further teaches the chair frame being a wheel chair frame.

[claim 13] Haskins further teaches the wheel chair frame being a folding wheel chair frame.

[claims 14-12, 14-13] Haskins further shows the telescoping support being removable with said upper member of said telescoping support from said wheel chair frame thereby to permit folding of said wheelchair frame (shown in FIG 3).

[claim 19] Haskins discloses a folding wheel chair (see FIGS 1-22) with riser seat, comprising:

- a wheel chair frame (40) having left and right frame subassemblies (80)
- a scissor arrangement (111, 112) including a center pivot (115) interconnecting said frame subassemblies for movement towards and away from each other between a deployed condition and a folded condition of the wheel chair (shown in FIGS 1-3)
- a telescoping support (62A) mounted between said frame subassemblies
- a seat (35) entirely supported on said telescoping support for movement between a lowered and an elevated condition (Column 8, lines 60-65)

Haskins also discloses said telescoping support being operative for raising and lowering said seat relative to said chair frame (Column 8, lines 60-65) and said seat being removable from between said frame subassemblies to permit folding of the wheelchair frame (shown in FIG 3).

Haskins does not teach the operation of the telescoping support as being responsive to repositioning of a user's body weight.

Square teaches (see FIGS 1-5) a riser seat supported on a telescoping support wherein the telescoping support is operative for raising and lowering said seat in response to the repositioning of a user's body weight on said seat relative to said telescoping support (Column 1, lines 49-56).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wheel chair shown by Haskins with the body weight responsive operation of the seat as taught by Square, since such a modification would provide the advantage of the user having the ability to raise himself to a standing position to greet a business associate or friend, with the aid of the spring, while expending only a bit of energy.

[claim 20] Square further teaches the telescoping support including a spring (19) normally urging said telescoping support towards said elevated condition.

[claim 22] Square further teaches the seat being elevated on said frame in response to the user partially shifting his or her body weight onto a ground surface such that said spring overcomes the user's body weight remaining on said seat (Column 3, lines 1-11). The combination would disclose the shifting of the user's weight causing telescoping extension of said telescoping support for raising said seat relative to said frame.

[claims 25-19, 25-20, 25-22] Haskins further discloses said telescoping support being supported at said center pivot between said frame subassemblies.

Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haskins in view of Square and further in view of Bloswick.

[claims 23-19, 23-20, 23-22] Haskins further discloses said telescoping support having at least two tubular members assembled in sliding telescoping relationship. Haskins does not teach said telescoping support being mounted in fixed inclined orientation relative to said frame.

Bloswick teaches (see FIG 1) a telescoping support (66) for a riser seat (40) on a wheelchair that is mounted in fixed inclined orientation relative to said frame. Examiner notes that as mounted, the telescoping support of Bloswick is in fixed inclined orientation.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seat shown by Square, with the inclined telescoping support as taught by Bloswick, since such a modification would provide the advantage of pushing the user out away from the frame where it would be easier for a male user to use a urinal if no handicapped toilet was available when needed.

[claims 24-23-19, 24-23-20, 24-23-22] Haskins further shows said telescoping support having an upper member (265) telescopically slidable relative to a lower member (63), said seat being mounted on said upper member, and Square teaches the use of a spring (19) contained in an upper member of a telescoping support for urging said seat towards said elevated condition. The combination would disclose the spring being contained in said upper member and said lower member for urging said upper member and said seat towards said elevated condition.

Allowable Subject Matter

Claims 15, 17, 18, 33-38, 40, and 42-44 are allowed.

Claims 21 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1-14, 19, 20, and 22-26 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Chang (U.S. Patent No. 6,170,914 B1) teaches a height adjustable seat including a tubular and rectangular telescoping support.

Ward et al (U.S. Patent No. 5,063,617) teaches a height adjustable seat having a fixed telescoping support inclined away from vertical and towards the front of the seat.

Edmund et al (U.S. Patent No. 5,363,934), Stratton (U.S. Patent No. 2,762,422), Visone (U.S. Patent No. 6,431,650 B1), and Ridge (U.S. Patent No. 2,729,272) teach a wheel chair having a height adjustable seat including a tubular telescoping support.

Fritz (U.S. Patent No. 3,381,926) teaches a height adjustable seat having a spring normally urging the seat to an extended position.

Simpson (U.S. Patent No. 4,431,076) teaches a folding wheel chair having a height adjustable seat including a tubular telescoping support.

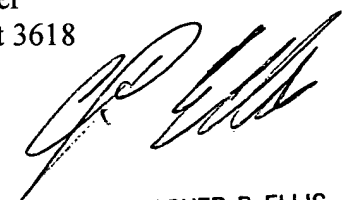
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vaughn T. Coolman whose telephone number is (571) 272-6014. The examiner can normally be reached on Monday thru Friday, 8am-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


vtc 07/16/06

Travis Coolman
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